

1                   IN THE UNITED STATES DISTRICT COURT  
2                   WESTERN DISTRICT OF MISSOURI  
3                   WESTERN DIVISION

4   UNITED STATES OF AMERICA,       )  
5                                        )  
6                                        Plaintiff,)       )  
7                                        vs.        )       Case No. 07-00093-01-CR-W-ODS  
8                                        )  
9   RINGLING DAN COHN,                )       Thursday, March 13, 2008  
10                                       )  
11                                       Defendant.)       Kansas City, Missouri

12  
13                   TRANSCRIPT OF GUILTY PLEA PROCEEDINGS  
14                   BEFORE THE HONORABLE ORTRIE D. SMITH  
15                   UNITED STATES DISTRICT JUDGE

16  
17   APPEARANCES:

18   FOR THE PLAINTIFF:

19                   Mr. Kenneth Michael Warner  
20                   United States Attorney's Office  
21                   400 East 9th Street, 5th Floor  
22                   Kansas City, Missouri 64106

23   FOR THE DEFENDANT:

24                   Mr. John O'Connor  
25                   Wagstaff & Cartmell  
                  4740 Grand Avenue, Suite 300  
                  Kansas City, Missouri 64112

26   COURT REPORTER:

27                   Cynthia M. Johnson, RMR  
28                   U.S. Court Reporter  
29                   400 East 9th Street, Room 8552  
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31                   (816) 512-5657

32   Proceedings reported by computer stenography; transcript  
33   produced by computer.

1 THE COURT: Good afternoon. Be seated, please.

2 United States versus Ringling Dan Cohn.

3 Mr. Cohn, hello, again.

4 DEFENDANT COHN: Hello, sir.

5 THE COURT: 07-93-01 is the case number. Mike Warner  
6 for the United States. John O'Connor appearing with Mr. Cohn.

7 Your client wishes to change his plea, Mr. O'Connor?

8 MR. O'CONNOR: Yes, Judge. If it's okay, he's in a  
9 wheelchair. If he can remain seated, that would be helpful.

10 THE COURT: Sure.

11 Mr. Warner, would you remind us of the charges and  
12 the range of punishment, please?

13 MR. WARNER: Judge, the defendant is going to plead  
14 guilty to Counts 3, 6, 10, and 12. All four counts are counts  
15 of bank fraud. The range of penalty for that charge are not  
16 more than 30 years imprisonment, not more than five years  
17 supervised release, not more than a \$1 million fine. They are  
18 class B felonies and there would be a \$100 special assessment  
19 per count. That's all, Your Honor.

20 THE COURT: I notice, Mr. Warner, the plea agreement  
21 contains a joint recommendation with respect to the sentence,  
22 however it doesn't appear to be an 11C1C plea agreement. Am I  
23 correct?

24 MR. WARNER: That's correct?

25 THE COURT: All right. Mr. Cohn, you understand the

1 charges?

2 DEFENDANT COHN: Yes, sir.

3 THE COURT: And you understand the potential  
4 punishment that you face upon conviction?

5 DEFENDANT COHN: Yes, Your Honor.

6 THE COURT: In a moment the clerk is going to place  
7 you on your oath, Mr. Cohn. I'm going to ask you some  
8 questions. Mr. O'Connor will also ask you some questions. My  
9 questions will be designed to demonstrate that as you stand  
10 here, as you are here today, as you sit here today, you are  
11 competent to change your plea; that you know your rights and  
12 what rights you'll be giving up and that you're familiar with  
13 the terms of the plea agreement.

14 Mr. O'Connor will question you about the facts of the  
15 offense because if you plead guilty, I have to be sure you are  
16 pleading guilty because you are guilty and for no other reason.

17 Ordinarily, the answers you give to our questions  
18 would not be admissible against you in this case or any other  
19 case. There is an exception to that general rule. And it is  
20 that if you answer falsely while under oath, you could be  
21 charged with the crime of perjury and what you say here would  
22 be admissible in that case. Do you understand that?

23 DEFENDANT COHN: Yes, Your Honor.

24 THE COURT: Alex?

25 RINGLING DAN COHEN, DEFENDANT, SWORN

1 THE COURT: Let me begin by asking what condition  
2 causes you to use the wheelchair.

3 DEFENDANT COHN: I had surgery back in 1985 and I had  
4 two ruptured disks at the time. And there's still a sliver on  
5 the side of the nerve I couldn't have removed because it would  
6 clip the nerve. It just acts up. And I also think a couple  
7 other disks on the other side are also blown out.

8 THE COURT: Are you receiving any type of medication?

9 DEFENDANT COHN: No, Your Honor.

10 THE COURT: How old are you?

11 DEFENDANT COHN: I'm 57.

12 THE COURT: How much education have you had?

13 DEFENDANT COHN: High school education.

14 THE COURT: You read, write and understand English?

15 DEFENDANT COHN: Yes, Your Honor.

16 THE COURT: You're not under the influence of  
17 medication today?

18 DEFENDANT COHN: No, Your Honor.

19 THE COURT: At the time the offense occurred were you  
20 under the influence of alcohol, drugs or medication?

21 DEFENDANT COHN: No, Your Honor.

22 THE COURT: Have you ever been diagnosed as having  
23 any form of mental disease or defect of any kind?

24 DEFENDANT COHN: No, Your Honor.

25 THE COURT: Mr. O'Connor, do you have any concerns

1 about your client's competency?

2 MR. O'CONNOR: No, Judge.

3 THE COURT: Mr. Cohn, you have a number of rights  
4 which you'll be giving up by pleading guilty today. I need to  
5 review those with you. And when I finish, if you have  
6 questions I will answer your questions.

7 First, you have the right to persist in your plea of  
8 not guilty. If you were to do that then in due course this  
9 case would be set for trial.

10 At that trial you would have the right to be  
11 represented by an attorney. You would have the right to the  
12 presumption of innocence. You don't have to prove anything.  
13 The government has the burden of proof and must prove each and  
14 every essential element of the offense charged, offenses  
15 charged beyond a reasonable doubt before you could be  
16 convicted.

17 If we were to have a trial in this case you would  
18 have the right to have the jury decide your guilt or innocence.  
19 That jury would consist of twelve individuals selected randomly  
20 from the western half of Missouri. The jury's verdict would  
21 have to be unanimous before you could be convicted.

22 If we were to have a trial in this case you would  
23 have the right to call your own witnesses; use the subpoena  
24 power of this court to compel witnesses to come forward and  
25 testify. You would have the right to confront and

1 cross-examine any witnesses sponsored by the United States.  
2 And you would have the right to present any defenses you may  
3 have to the charges against you.

4           If we were to have a trial in this case you could  
5 either testify or not. That would be your decision to make.  
6 And if you elected not to testify and if you asked me, I would  
7 instruct the jury that the jury could not assume your guilt  
8 simply because you chose to remain silent. If you were to be  
9 convicted at trial, you would have the right to appeal that  
10 verdict to the Court of Appeals.

11           Mr. Cohn, do you understand your rights?

12           DEFENDANT COHN: Yes, Your Honor.

13           THE COURT: Do you have any questions about any of  
14 them?

15           DEFENDANT COHN: No, Your Honor.

16           THE COURT: Do you understand that if you plead  
17 guilty this afternoon and if I accept your plea, you'll be  
18 giving up those rights that I just talked about?

19           DEFENDANT COHN: Yes, Your Honor.

20           THE COURT: Mr. O'Connor, would you display page 13  
21 of the plea agreement to your client?

22           Mr. Cohn, is that your signature on page 13?

23           DEFENDANT COHN: Yes, Your Honor.

24           THE COURT: Mr. O'Connor, you witnessed your client's  
25 signature?

1 MR. O'CONNOR: Yes, Judge.

2 THE COURT: Both of you signed it today?

3 MR. O'CONNOR: Yes, sir.

4 THE COURT: But you have had this plea agreement or  
5 some earlier version of it and gone over it with your client  
6 before today. Is that true?

7 MR. O'CONNOR: Yes. Right up in the holding cell.

8 THE COURT: Say that again.

9 MR. O'CONNOR: I read it to him today up in the  
10 holding cell. We talked about the contents of it before today  
11 but the actual agreement was read to him today.

12 THE COURT: Mr. Cohn, when you signed this plea  
13 agreement, was it your intention that your signature would show  
14 your consent to everything contained within the plea agreement?

15 DEFENDANT COHN: Yes, Your Honor.

16 THE COURT: Do you fully understand everything that's  
17 in the plea agreement?

18 DEFENDANT COHN: Yes, Your Honor.

19 THE COURT: Did you read it yourself?

20 DEFENDANT COHN: Mr. O'Connor read it to me.

21 THE COURT: All right. Did you ask him questions?

22 DEFENDANT COHN: A few, yes, Your Honor.

23 THE COURT: Has he answered all of your questions?

24 DEFENDANT COHN: Yes, Your Honor.

25 THE COURT: Is there anything you would like to ask

1 me about the contents of the plea agreement?

2 DEFENDANT COHN: No, Your Honor.

3 THE COURT: Let's look at a few of the provisions  
4 together. First, Section 3, beginning at the top of page 2 and  
5 carrying over to page 3. That sets out the factual basis for  
6 your plea of guilty, Mr. Cohn. And you told me that  
7 Mr. O'Connor read the plea agreement to you so I'm going to ask  
8 you now if everything contained within that section, Section 3,  
9 is true?

10 DEFENDANT COHN: Yes, Your Honor.

11 THE COURT: Section 5 on page 4 reminds us of what  
12 Mr. Warner told us a moment ago and that is that the maximum  
13 sentence in this case is 30 years of imprisonment. There would  
14 be five years of supervised release. Do you understand what  
15 supervised release is?

16 DEFENDANT COHN: Yes, Your Honor.

17 THE COURT: Do you understand that following any  
18 period of imprisonment there would be certain rules you have to  
19 follow and you have to report periodically to a probation  
20 officer? If you fail to report or if you violate those rules,  
21 your supervised release could be revoked and you could be  
22 returned to prison. Do you understand?

23 DEFENDANT COHN: Yes, Your Honor.

24 THE COURT: 6A says that I will consult the  
25 sentencing guidelines, however those guidelines are advisory



1 and that my obligation is to impose a sentence which is  
2 reasonable under all of the circumstances.

3 Now, what that means to you, Mr. Cohn, as a practical  
4 matter is that the guidelines themselves are advisory. I'm not  
5 required to follow the guidelines. The agreements that you  
6 have reached with the government are not binding on me and I  
7 can impose a sentence which I believe is reasonable under all  
8 of the circumstances up to the statutory maximum of 15 years.  
9 Do you understand?

10 DEFENDANT COHN: Yes, Your Honor.

11 THE COURT: Paragraph, section rather, Section 10  
12 with its subparagraphs A through K set out the attorneys' best  
13 judgment as to what a conviction here would result in under the  
14 sentencing guidelines. And these are very fine lawyers,  
15 Mr. Cohn. They probably are right. But I'll have to make my  
16 own calculation with the assistance of the probation  
17 department. It may be that my calculation is exactly the same  
18 as those contained in Section 10. It may be that my  
19 calculation is different. And if they are different, it may  
20 result in a sentence greater than what you hoped for. Do you  
21 understand that?

22 DEFENDANT COHN: Yes, Your Honor.

23 THE COURT: In Paragraphs 15 and 16 of the plea  
24 agreement, Mr. Cohn, you give up some important rights.

25 Paragraph 15 says you give up the right to appeal the

1 finding of guilt or the sentence you receive. Paragraph 16  
2 says that you give up any rights you might otherwise have to  
3 obtain information about your case under the Freedom of  
4 Information Act or the Privacy Act of 1974. You knew those  
5 provisions were in the plea agreement?

6 DEFENDANT COHN: Yes, Your Honor.

7 THE COURT: Do you understand that if those  
8 provisions were not in the plea agreement you might have the  
9 right to appeal, might have the right to appeal the finding of  
10 guilt but certainly the sentence imposed and you might have the  
11 right to get information about your case under those two  
12 federal laws?

13 DEFENDANT COHN: Yes, Your Honor.

14 THE COURT: And you're asking me to accept this plea  
15 agreement with those provisions in it?

16 DEFENDANT COHN: Yes, Your Honor.

17 THE COURT: I'm flipping through the plea agreement,  
18 Mr. Warner, looking for a section that relates to restitution  
19 and I'm not seeing it. Is this case governed by the Mandatory  
20 Victim Restitution Act?

21 MR. WARNER: It would be, Your Honor. We do not have  
22 at this point in time an exact restitution figure. We are  
23 confident per the plea agreement and the paragraph, the  
24 subparagraph in Paragraph 10 that the range would be between  
25 120,000 but less than 200,000. But the exact figure I think

1 may be subject to some calculations still and some discussions  
2 between the parties perhaps.

3 THE COURT: Okay. Mr. Cohn, this case very likely is  
4 going to be controlled and governed by the Mandatory Victim  
5 Restitution Act, which means that I'm required to enter an  
6 order at sentencing directing that you repay monies taken from  
7 victims. It may be that you and I will disagree on the amount  
8 of restitution. What I need for you to understand is that I  
9 won't allow you to withdraw your guilty plea just because you  
10 don't like the amount of restitution that is ordered; just  
11 because you don't like the sentence you receive or just because  
12 you don't like the conditions of supervised release which are  
13 imposed. Do you understand?

14 DEFENDANT COHN: Yes, Your Honor.

15 THE COURT: At least as to restitution I don't think  
16 this plea agreement would keep you from appealing that order  
17 unless I'm overlooking something but I'll leave that to  
18 Mr. O'Connor to advise you.

19 Have any promises been made about the sentence I'm  
20 going to give you if you plead guilty?

21 DEFENDANT COHN: No, Your Honor.

22 THE COURT: You understand that's up to me?

23 DEFENDANT COHN: Yes, Your Honor.

24 THE COURT: Has anyone threatened you, coerced you or  
25 bullied you in any way to get you to plead guilty?

1 DEFENDANT COHN: No, Your Honor.

2 THE COURT: Have you had enough time to think about  
3 it?

4 DEFENDANT COHN: Yes, Your Honor.

5 THE COURT: If I were to recess the hearing this  
6 afternoon, which I'm willing to do, to give you more time to  
7 discuss it with family, friends or Mr. O'Connor, do you think  
8 you might change your mind?

9 DEFENDANT COHN: No, Your Honor.

10 THE COURT: Are you satisfied with Mr. O'Connor as  
11 your attorney?

12 DEFENDANT COHN: Yes, Your Honor.

13 THE COURT: Has he done everything you asked him to  
14 do?

15 DEFENDANT COHN: Yes, Your Honor.

16 THE COURT: Did he do anything you told him not to  
17 do?

18 DEFENDANT COHN: No, Your Honor.

19 THE COURT: Has he been reasonably accessible to you?

20 DEFENDANT COHN: Yes, Your Honor.

21 THE COURT: If you called for him and he was  
22 unavailable, did he or someone in his office get back to you  
23 promptly?

24 DEFENDANT COHN: Yes, Your Honor.

25 THE COURT: Did you ask him to do any investigation

1 that he failed to do?

2 DEFENDANT COHN: No, Your Honor.

3 THE COURT: Did you ask him to talk to any witnesses  
4 that he failed to talk to?

5 DEFENDANT COHN: No, Your Honor.

6 THE COURT: Did he review the government's evidence  
7 personally and then go over that evidence with you so you would  
8 know what the evidence would be at trial?

9 DEFENDANT COHN: Yes, he did, Your Honor.

10 THE COURT: Did you ask him to file a motion to  
11 exclude or suppress any of that evidence at trial?

12 DEFENDANT COHN: I don't recall, Your Honor, but I  
13 don't think so.

14 THE COURT: Did you ask him to file any motions of  
15 any kind?

16 DEFENDANT COHN: No, Your Honor.

17 THE COURT: As you sit here this afternoon do you  
18 have any complaints at all about Mr. O'Connor as your attorney?

19 DEFENDANT COHN: No, Your Honor.

20 THE COURT: Mr. Warner, would you tell me what your  
21 evidence would be at trial, please?

22 MR. WARNER: Judge, if acceptable I would also  
23 incorporate by reference the facts in Paragraph 3 of the plea  
24 agreement.

25 THE COURT: Record will reflect that those facts are

1 incorporated.

2 MR. WARNER: Thank you.

3 Very briefly, Your Honor, the evidence would have  
4 shown between the approximate dates of July of '03 and  
5 September of '05 the defendant defrauded federally insured  
6 financial institutions here in Kansas City. Essentially, the  
7 evidence would have shown that the defendant fraudulently  
8 misrepresented his authority or purpose in withdrawing funds  
9 from the trust accounts of a man who is now deceased by the  
10 name of Griffith Coombs. Mr. Coombs was a person for whom the  
11 defendant had purported guardianship and other legal  
12 responsibilities or relationships for and with.

13 The evidence would have shown that the defendant  
14 exceeded his authority, misrepresented his authority to  
15 federally insured financial institutions and withdrew money  
16 from the trust accounts of Mr. Coombs for purposes other than  
17 the care and benefit of Mr. Coombs, primarily his own self use  
18 of the funds or for self enrichment. That's all, Your Honor.

19 THE COURT: And these banks and trust companies, I  
20 assume, were federally insured?

21 MR. WARNER: Yes, Your Honor.

22 THE COURT: You may have mentioned that. If so, I  
23 missed it.

24 Mr. O'Connor, can Mr. Warner make a submissible case  
25 against your client?

1 MR. O'CONNOR: Yes, Judge.

2 THE COURT: Would you ask him a few questions,  
3 please, to establish a factual basis?

4 MR. O'CONNOR: Yes, Your Honor.

5 Mr. Cohn, as to Count 3, do you agree that on  
6 October 30 of 2003 in the Western District of Missouri with the  
7 intent to defraud and attempt to execute a scheme to defraud  
8 Country Club Bank, a financial institution whose money is  
9 insured by the Federal Deposit Insurance Corporation by  
10 possessing, presenting and cashing a forged check, No. 3825  
11 dated October 30, 2003 drawn on the account of Griffith Coombs,  
12 Country Club Bank in the amount of \$3,500, thereby taking money  
13 and funds to which you were not entitled?

14 DEFENDANT COHN: Yes.

15 MR. O'CONNOR: You understand that's bank fraud,  
16 Count 3, violation of Title 18, United States Code, Section  
17 1344?

18 DEFENDANT COHN: Yes.

19 MR. O'CONNOR: What is your plea to that charge?

20 DEFENDANT COHN: Guilty.

21 MR. O'CONNOR: As to Count 6, do you agree that on or  
22 about July 15, 2004, in Kansas City, Missouri, Western  
23 District, you knowingly and with intent to defraud executed,  
24 attempted to execute a scheme to defraud Commerce Bank, an  
25 institution which deposits were federally insured by the

1 Federal Deposit Insurance Corporation in that you submitted an  
2 antique furniture repair receipt dated July 15, 2004, in the  
3 amount of \$5,000 to Commerce Trust for reimbursement from the  
4 trust account of Griffith Coombs to defraud, you did take money  
5 or funds to which you were not entitled, \$5,000?

6 DEFENDANT COHN: Yes.

7 MR. O'CONNOR: You agree that's also in violation of  
8 Title 18 United States Code 1344, bank fraud?

9 DEFENDANT COHN: Yes.

10 MR. O'CONNOR: What is your plea to that charge?

11 DEFENDANT COHN: Guilty.

12 MR. O'CONNOR: As to Count 10, do you agree that on  
13 December 27, 2004 in the Western District of Missouri with the  
14 intent to defraud you executed, attempted to execute a scheme  
15 to defraud Commerce Trust Company, a division of Commerce Bank  
16 insured by the Federal Deposit Insurance Corporation, by  
17 requesting four gift checks each in the amount of \$11,000  
18 totaling \$44,000, issued from the trust account of Griffith  
19 Coombs and provided to Maggie Ciurej, Shunte Johnson, Telissa  
20 A. Moore and LaShay McLaughlin, by such scheme to defraud,  
21 control money or funds to which you were not entitled to,  
22 \$44,000?

23 DEFENDANT COHN: Yes.

24 MR. O'CONNOR: These are all in violation of Title 18  
25 Section 1344, bank fraud. What is your plea to Count 10?



1           DEFENDANT COHN: Guilty.

2           MR. O'CONNOR: As to Count 12, you agree that on or  
3 about January 15, 2005, Kansas City, Missouri, Western District  
4 of Missouri, you knowingly and with intent to defraud executed  
5 and attempted to execute a scheme to defraud Commerce Trust  
6 Company, a division of Commerce Bank, a financial institution  
7 whose deposits are insured by the Federal Deposit Insurance  
8 Corporation and that you requested eleven gift checks each in  
9 the amount of \$11,000, totaling \$121,000, be issued from the  
10 trust account of Griffith Coombs, provided to you, Patricia  
11 Foreman, LaShay McLaughlin, LaKesha McLaughlin, LaShonda  
12 McLaughlin, Michael D. Simmons, Joetta Bowie, Thecil Johnson,  
13 Shunte Johnson, Letissa A. Moore, and Maggie Ciurej. And by  
14 such scheme to defraud, the defendant took the money which he  
15 was not entitled \$121,000?

16           DEFENDANT COHN: Yes.

17           MR. O'CONNOR: All in violation of Title 18, United  
18 States Code, Section 1344, bank fraud?

19           DEFENDANT COHN: Yes.

20           MR. O'CONNOR: What is your plea to Count 12?

21           DEFENDANT COHN: Guilty.

22           THE COURT: Mr. O'Connor, why is the plea of guilty  
23 to Counts 3, 6, 10 and 12 in Mr. Cohn's best interest?

24           MR. O'CONNOR: I believe the government has  
25 sufficient evidence to prove he's guilty beyond a reasonable

1 doubt. I think by pleading guilty he gets acceptance of  
2 responsibility, early acceptance of responsibility. We do have  
3 an agreement as to the sentence although that's up to the Court  
4 but I think the sentence takes into account the crimes that  
5 occurred. I think the guideline calculation in this case and  
6 the other counts would be for a more significant sentence.  
7 Because the defendant is, in fact, guilty, I believe it is in  
8 his best interest to plead guilty.

9 THE COURT: On his behalf do you ask me to accept the  
10 plea agreement?

11 MR. O'CONNOR: I do, Your Honor.

12 THE COURT: Mr. Cohn, do you want me to accept this  
13 plea agreement?

14 DEFENDANT COHN: Yes, Your Honor.

15 THE COURT: Mr. Warner?

16 MR. WARNER: Yes, Your Honor.

17 THE COURT: The plea agreement is accepted.

18 And now, Mr. Cohn, I will ask you to enter your plea  
19 to Counts 3, 6, 10 and 12 of the indictment. Are you guilty or  
20 not guilty?

21 DEFENDANT COHN: Guilty, Your Honor.

22 THE COURT: I'll accept Mr. Cohn's plea of guilty and  
23 ask the probation department to do an investigation prior to  
24 sentencing.

25 In accepting Mr. Cohn's plea I would like for the

1 record to reflect that I make the following specific findings.  
2 I find that Mr. Cohn understands the charges against him and  
3 the potential consequences of his plea of guilty. That he has  
4 been advised of his rights, that he intelligently and  
5 voluntarily waives those rights; that he has been ably and  
6 competently assisted by Mr. O'Connor his attorney. That he  
7 suffers from no mental disease or defect that would excuse his  
8 conduct under the law or limit his ability to aid in his own  
9 defense. That his decision to plead guilty has been made  
10 freely voluntarily and without coercion; that there is a  
11 factual basis for his pleas of guilty. And upon this record I  
12 find Mr. Cohn guilty beyond a reasonable doubt of the offenses  
13 charged in Counts 3, 6, 10 and 12 of the indictment.

14 Mr. Cohn, I have asked the probation department to do  
15 an investigation. Mr. O'Connor will advise you concerning your  
16 cooperation. When the investigation is finished, a report will  
17 be prepared. You'll have a chance to read that report and make  
18 objections to the factual findings or guideline applications  
19 contained in the report.

20 Sentencing will be scheduled for Thursday, June 26 of  
21 this year at 11:15 a.m. June 26 at 11:15. And if we have a  
22 scheduling conflict, we'll try to work with you.

23 Mr. Cohn, have you understood everything that's  
24 happened here this afternoon?

25 DEFENDANT COHN: Yes, Your Honor.

1 THE COURT: Do you have any questions?

2 DEFENDANT COHN: No, Your Honor.

3 THE COURT: Mr. O'Connor, anything further?

4 MR. O'CONNOR: No, thank you, Judge.

5 THE COURT: Mr. Warner?

6 MR. WARNER: No, Your Honor.

7 THE COURT: Thank you all. We're adjourned.

8 \* \* \*

9 CERTIFICATE

10 I certify that the foregoing is a correct transcript  
11 from the record of proceedings in the above-entitled matter.

12

13 12/10/2008 /s/ Cynthia M. Johnson

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